



Billing Code: 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA-R08-OAR-2013-0330, FRL-9904-88-Region 8]

**Approval of Request for Delegation of Authority for Prevention of Accidental Release,
North Dakota Department of Agriculture**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve North Dakota Department of Agriculture's (NDDA's) request for partial delegation of the Risk Management Program (RM Program) for facilities with an anhydrous ammonia storage capacity of ten thousand pounds or more that is intended to be used as fertilizer or in the manufacturing of a fertilizer ("agricultural anhydrous ammonia facilities") in the state of North Dakota. EPA retains authority for the RM Program for all other regulated chemicals which may be present at these facilities and for the RM Program generally in North Dakota for all other facilities.

DATES: This final rule is effective [**insert date 30 days after publication in the Federal Register**].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2013-0330. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Preparedness

Program, Environmental Protection Agency (EPA), Region 8 (8EPR-ER), 1595 Wynkoop Street, Denver, Colorado 80202-1129. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Brent Truskowski, Acting RMP Coordinator, Emergency Response and Preparedness Program, U.S. Environmental Protection Agency (EPA), Region 8 (8EPR-ER), 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6235, truskowski.brent@epa.gov.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The word and initials RM Program means Risk Management Program
- (iii) The initials NDDA mean North Dakota Department of Agriculture
- (iv) The initials RMP mean Risk Management Plan
- (v) The initials CFR mean Code of Federal Regulations
- (vi) The initials FR mean Federal Register
- (vii) The initials NDCC mean North Dakota Century Code
- (viii) The initials NDAC mean North Dakota Administrative Code

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I. Background

On June 20, 1996, the EPA promulgated the RM Program regulations (40 CFR Part 68) which were mandated under the accidental release prevention provisions of section 112(r)(7) of the CAA (61 FR 31668, June 20, 1996). These regulations require owners and operators of stationary sources subject to the regulations to submit risk management plans (RMPs) to a central location specified by the EPA. These regulations also encourage sources to reduce the probability of accidentally releasing substances that have the potential to cause harm to public health and the environment, and stimulate dialogue between industry and the public to improve accident prevention and emergency response practices.

Section 112(l) of the CAA and 40 CFR Part 63, Subpart E authorize the EPA to approve state rules and programs to be implemented and enforced in place of certain CAA requirements, including the RM Program set forth at 40 CFR Part 68. Under 40 CFR 63.95(b), the State's Part 68 program shall contain the following elements, consistent with the procedures in section 63.91, that an approvable State Accidental Release Prevention program is regulating:

- A demonstration of the State's authority and resources to implement and enforce regulations that are no less stringent than the regulations of 40 CFR Part 68, Subparts A through G and section CFR 68.200;

- A requirement that any source subject to the State's Part 68 program submit a RMP that reports at least the same information in the same format as required under Part 68, Subpart G;
- Procedures for reviewing RMPs and providing technical assistance to stationary sources including small businesses; and
- A demonstration of the State's authority to enforce all Part 68 requirements must be made, including an auditing strategy that complies with section 68.220.

For a program that covers all of the federally-listed chemicals (a "complete program") or a program covering less than all of the federally-listed chemicals (a "partial program") the State must take delegation of the full part 68 program for the federally-listed chemicals it regulates. For additional details regarding these requirements, refer to our proposal notice cited above.

The NDDA has a program in place for regulation of anhydrous ammonia facilities under authority of North Dakota Century Code (NDCC) 19-20.2 and 19-20.3 and promulgated in North Dakota Administrative Code (NDAC) 7-12-03-03, which addresses RM Program requirements and adopts 40 CFR Part 68 requirements by reference.

NDCC 19-20.2 provides general authority for the NDDA to license and regulate anhydrous ammonia facilities with a capacity exceeding six thousand gallons, engineering requirements for tanks, valve fittings, and other equipment, and siting requirements that specify minimum distances between anhydrous ammonia storage tanks and adjoining property lines, residences, places of public assembly, and institutional residences. NDCC 19-20.2 also provides the NDDA authority to enter any public or private premises to inspect equipment and respond to complaints. If violations are found, NDCC 19-20.2 allows the NDDA to issue cease and desist orders, revoke or suspend facility licenses, and issue civil penalties.

NDCC 19-20.3-01 gives the Agriculture Commissioner authority to determine compliance with the RM Program requirements set forth in 40 CFR Part 68 by providing the Commissioner authority to:

1. Request information from any person that sells, stores, or handles anhydrous ammonia for agricultural purposes, and is required to comply with the RM Program requirements.
2. Conduct inspections of any person that sells, stores, or handles anhydrous ammonia for agricultural purposes, and is required to comply with the RM Program requirements.
3. Obtain and review RMPs required under 40 CFR Part 68, and other records applicable to any person that sells, stores, or handles anhydrous ammonia for agricultural purposes, and is required to comply with the RM Program requirements.

The NDAA has requested partial delegation of the RM Program for facilities with an anhydrous ammonia storage capacity of ten thousand pounds or more that is intended to be used as fertilizer or in the manufacturing of a fertilizer (“agricultural anhydrous ammonia facilities”). After a thorough review (as described in detail in our proposal notice) of North Dakota’s partial delegation request, the pertinent statutes and regulations, and after appropriate public notice of the proposed delegation, Region 8 finds that such a delegation is appropriate in that North Dakota has satisfied the criteria in 40 CFR 63.91 and 63.95 by demonstrating it has adequate and effective authorities, resources, and procedures in place for implementation and enforcement of agricultural anhydrous ammonia facilities subject to the RM Program. As approved, North Dakota has the primary authority and responsibility to carry out elements of the RM Program for agricultural anhydrous ammonia facilities within the State, including on-site inspections, recordkeeping reviews, audits, compliance assistance and outreach, and non-criminal enforcement. The EPA will retain the RM Program for all other regulated chemicals which may

be present at these facilities. See 40 CFR 68.130. For additional information, please see the proposed rule, “Approval of North Dakota Request for Partial Delegation of Prevention of Accidental Release, Clean Air Act Section 112(r) Program” EPA-R08-OAR-2013-0330, 78 FR 66321 (Nov. 5, 2013).

II. Response to Comments

We received no comments on our proposed approval of NDDA’s request for delegation.

III. Final Action

The EPA is approving NDDA's request for partial delegation of authority to implement and enforce (with the exception of criminal enforcement) the RM Program for agricultural anhydrous ammonia facilities as defined by NDAC 7-12-03-03. This delegation will extend to agricultural anhydrous ammonia facilities in North Dakota that are sources subject to the accidental release prevention regulations in 40 CFR Part 68,¹ with the exception of sources in Indian country as defined by 18 U.S.C. 1151.

If the EPA determines that NDDA’s procedures for enforcing or implementing the 40 CFR part 68 requirements are inadequate, or are not being effectively carried out, this delegation may be revoked in whole or in part in accordance with the procedures set out in 40 CFR 63.96(b). In instances where there is a conflict between a NDDA interpretation and a Federal interpretation of applicable regulations in 40 CFR part 68, the Federal interpretation must be applied if it is more stringent than that of the NDDA. The Administrator retains the specific authorities under 40 CFR 68.120 regarding the petition process for modifying the list of regulated substances identified in 40 CFR 68.130.² Although the NDDA has primary authority

¹ EPA notes that under 40 CFR 68.125, ammonia used as an agricultural nutrient, when held by farmers, is exempt from all provisions of part 68.

² Accordingly, the NDDA rules do not incorporate by reference 40 CFR 68.120.

and responsibility to implement and enforce the chemical accident prevention provisions for agricultural anhydrous ammonia, nothing shall preclude, limit, or interfere with the authority of the EPA to exercise its enforcement, investigatory, and information gathering authorities concerning this part of the Act.

IV. Statutory and Executive Order Reviews

Under the CAA, the Regional Administrator is authorized to approve program delegation when that program complies with the provisions of the CAA and applicable federal regulations (42 U.S.C. 7410(k), 40 CFR 52.02(a)). Thus, in reviewing delegation requests, the EPA's role is to review and approve state programs provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves a state program and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and,
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the state program is not approved to regulate in Indian country located in North Dakota, and the EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **insert date 60 days after publication in the Federal Register**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, pertaining to the approval of the NDDA's delegation of authority for the chemical accident prevention provisions (CAA section 112), may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Chemicals, Hazardous substances,
Intergovernmental relations, Risk management program.

Dated: December 13, 2013

Shaun L. McGrath,
Regional Administrator,
Region 8.

40 CFR part 63 is amended as follows:

**PART 63 - NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR
POLLUTANTS FOR SOURCE CATEGORIES**

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

Subpart E--Approval of State Programs and Delegation of Federal Authorities

2. Section 63.99 is amended by adding paragraph (a)(35) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(35) North Dakota. The North Dakota Department of Agriculture is delegated the authority to implement and enforce the provisions of 40 CFR part 68 at facilities with an anhydrous ammonia storage capacity of ten thousand pounds or more that is intended to be used as fertilizer or in the manufacturing of a fertilizer within North Dakota and that are subject to the requirements of 40 CFR part 68, in accordance with the final rule, dated [**INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER**].